



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

May 19, 1959

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-628

Re: Payment of fees or
commissions earned
in civil proceedings
in which the State
is a party.

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"Under the provisions of Article 3912e R.C.S., Section 1, Section 3, Section 5 and Section 19, Subsection (j) is it legal for this department to issue a warrant to a county or district officer for fees or commissions earned by them in civil proceedings in which the State is a party to the suit? Or, should all fees and commissions be paid only to the clerk on a cost bill for all such fees and commissions earned by the officers in the case? In the event you rule that only the cost bill should be paid, should the warrant be made payable jointly to the clerk and the county treasurer?

"In the event you rule that the fees in civil cases where the State is a party to the suit should be paid directly to the officers who earned them, would it be necessary for this department to determine that the officer has been commissioned under the provisions of Article 3882 R.C.S.? Under the same conditions would it be necessary for the officer to make the loyalty oath provided for by Article 6252-7 R.C.S. and file

it with this department before he could be paid his fees by this department?

"Is it necessary for the loyalty oath, provided for by Article 6252-7 R.C.S., be made by an officer in a fee county and filed with this department before he could be paid by this department for any fee earned by him in a felony case?"

Section 61 of Article XVI, Constitution of Texas, provides in part as follows:

"All fees earned by district, county and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that fees incurred by the State, county and any municipality, or in case where a pauper's oath is filed, shall be paid into the county treasury when collected and provided that where any officer is compensated wholly on a fee basis such fees may be retained by such officer or paid into the treasury of the county as the Commissioners Court may direct. . . ."

This section not only requires that certain county officers be compensated on a salary basis, but requires that all fees earned by such officer be paid into the county treasury for the account of the proper fund. Wichita County v. Robinson, 155 Tex. 1, 276 S.W.2d 509 (1955).

Sections 1 and 3 of Article 3912e, Vernon's Civil Statutes, as amended by Chapter 23, Acts 56th Legislature, Regular Session, 1959, effective March 10, 1959, provide as follows:

"Section 1. No district officer shall be paid by the State of Texas any fees or commissions for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such

officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such moneys received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act, to account for fees, commissions and costs collected from private parties; provided further, that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee."

"Sec. 3. In all cases where the Commissioners Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty

to account for and to pay all such moneys received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases or eminent domain proceedings by the State but all costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties, providing further that the provisions of this Section shall not affect the payment of fees and commissions by the State or County for services rendered by County Officers in connection with the acquisition of rights of way for public roads or highways, and provided that such fees and commissions shall be deposited into the Officers' Salary Fund of the County by the County Officer collecting such fee."

The emergency clause of Chapter 23, Acts of the 56th Legislature, states:

"The fact that under existing laws the County Officers are prohibited from collecting fees and commissions from the State or County for services rendered in connection with the acquisition of rights of way for public roads and highways, other than as payment of cost in civil actions and the fact that the accelerated highway program has placed an undue burden on the Officers' Salary Fund of the Counties due to the increased work required to be performed by the County Officers for which no fee or commission is collected creates an emergency, . . . etc." (Emphasis ours)

Prior to the enactment of Chapter 23, the prohibitions contained in Sections 1 and 3 of Article 39^{12e} prohibited the payment of any fee or commission by the State to any County officer for any service performed by him as such officer unless the fees constituted (1) fees collected by the Assessor-Collector of Taxes and (2) payment of costs in civil cases. See Attorney General's Opinion WW-508 holding that the Comptroller

of Public Accounts is not authorized to issue a warrant in payment of a recording fee for recording an agricultural lease on lands purchased by the Veterans Land Board.

Chapter 23, Acts of the 56th Legislature, recognized that the prohibition contained in Sections 1 and 3 contained only the exceptions mentioned above and because the accelerated highway program had placed an undue burden on the Officers' Salary Fund of the Counties added an additional exception to the prohibition so as to permit the State to pay fees and commissions for service rendered by county officers in connection with the acquisition of rights of way for public roads or highways.

It is noted that the prohibitions contained in Sections 1 and 3 of Article 3912e, Vernon's Civil Statutes, concerning the payment of fees or commissions by the State do not apply to the payment of costs in civil cases by the State where the fees earned constitute a part of the cost assessed against the State in a particular case. Therefore, such cost must be paid by the State as provided by law rather than as a fee to the individual officer.

Subdivision (j) of Section 19, Article 3912e, applicable to counties having a population in excess of 190,000 inhabitants, provides as follows:

"(j) Each district, county, and precinct officer who shall be compensated on a salary basis shall continue to charge for the benefit of the Officers' Salary Fund of his office provided for in this Section, all fees and commissions which he is now or hereafter may be authorized to charge against and collect from the State of Texas for services performed by him in civil proceedings and to file claims for the fees or commissions due for such services in the manner now or hereafter provided by law; and it shall be the duty of said officer to account for and cause to be paid to the salary fund created for such officer all such commissions and fees when paid by the State in like manner as for costs collected from private parties; provided further, that such warrants issued by the State Comptroller of Public Accounts shall be made payable jointly to the officer in office at the date of payment and to the county treasurer, and that upon endorsement thereof such warrants

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shall be deposited forthwith by said county treasurer in the salary fund created for such officer."

Subdivision (j) of Section 19 above quoted, specifically provides how costs in civil cases are to be paid by the State. The Comptroller is specifically directed to make warrants payable to the officer in office at the date of the payment and to the County Treasurer. Therefore, you are advised that in counties of 190,000 inhabitants or more, fees or commissions earned by officers in civil proceedings in which the State is a party, assessed as costs, should be paid jointly to the Clerk and to the County Treasurer in payment of the cost bill, unless the final judgment directs otherwise. In other counties the warrant should be made payable to the Clerk or as directed by the final judgment.


Article 6252-7, Vernon's Civil Statutes, providing for loyalty oaths, is applicable to the payment by the State of Texas of salaries or other compensation for personal services rendered the State, and, is, therefore, not applicable to payment of costs by the State.

SUMMARY

In counties containing a population in excess of 190,000 inhabitants, fees or commissions assessed as cost against the State in a civil proceeding in which the State is a party should be paid by warrant issued jointly to the Clerk and County Treasurer unless a final judgment directs otherwise. In other counties, such warrant should be made payable to the Clerk or as directed by the final judgment.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
John Reeves
Assistant

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APPROVED:

OPINION COMMITTEE

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Raymond V. Loftin, Jr.

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REVIEWED FOR THE ATTORNEY GENERAL

BY: W. V. Geppert